IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL UNDER ARBITRATION ACT NO.3/2006

State of Goa, represented by the Executive Engineer, Works Division XIV, CADA, Irrigation Department, Gogal, Margao, Goa ..... Appellant.

V/s.

M/s. Praveen Enterprises, a registered partnership firm, Government Contractor, having its registered Office at Station Road, Margao, Goa, represented by its Partner & Attorney holder Shri Prakash Ramnath Volvotkar ..... Respondent.

Ms. W. Coutinho, Government Advocate for the appellant.

Mr. Sudesh Usgaonkar, Advocate for the respondent.

CORAM : R.S. MOHITE, J.

DATE : AUGUST 31, 2007.

ORAL JUDGMENT :

This is an appeal filed by the State of Goa, impugning a Judgment and Order passed by the Adhoc Additional District Judge, Fast Track Court-I, Margao, Goa in Civil Misc. Application No.51/2004(new). By the impugned Judgment and Order, the Adhoc Additional District Judge sustained the objection raised by the present respondent to the extent that the

arbitrator had allowed the counter claim filed by the present appellant. While doing so, the Court ordered that the respondent was free to agitate the counter claim in case it was permissible in terms of the agreement/law. Rest of the objections raised by the parties were discarded and it was directed that the award be adjusted excluding the amount awarded in the counter claim.

2. Brief facts of the case are that the appellant had entered into an agreement pertaining to farm development works in command area of branch canal of minor M3 for water course No.3 and 3A on 4.11.1992. As disputes and differences arose in respect of the said works, the respondent raised claims and gave notice to the appellant to appoint an arbitrator as per clause (25) of the aforesaid agreement. However, as the appellant refused to appoint an arbitrator, the present respondent filed Arbitration Petition No. 178/1998 under Section 11 of the Arbitration and Conciliation Act, 1996 for appointment of an arbitrator. By order dated 4.12.1998, passed by this Court in the aforesaid Arbitration Petition No.178/98, one Mr. S. V. Salelkar, retired Advisor, Konkan Railway Corporation, was appointed as the Sole Arbitrator by consent of the parties. Operative part of the said order dated 4.12.98 reads as under :

> " We have heard Shri S. U. Kamdar, learned counsel for the petitioners as also Shri M.I. Sethna, learned counsel for the respondents. By consent of the parties, Shri S.V. Salelkar, retired Advisor, Konkan Railway

> Corporation, Panaji-Goa is appointed as sole arbitrator."

3. The Arbitrator then entered into arbitration. The State of Goa, however, filed a counter claim, though they had not earlier raised any dispute either out of court or in the Section 11 proceedings. This counter claim was partly allowed by the arbitrator and after partly allowing the said counter claim, an award came to be passed. This was objected to by the respondent by filing Civil Misc. Application No.51/2004(new) before the Adhoc Additional District Judge and the objection was upheld though the rest of the award was confirmed, subject to adjustment relating to the amount granted in the counter claim.

4. The only point which is urged before me is that the counter claim arises from the same agreement and, therefore, it had been rightly dealt with and partly allowed by the arbitrator. It is contended that the impugned order is erroneous, in so far as it upheld the objection of the respondent relating to the counter claim. The issue which is raised in this appeal is no longer *res integra*. It is squarely dealt with by the judgment in the case of ***Charuvil Koshy Varghese vs. State of Goa,*** reported in 1998(2) CCC 21 (Bom.). In the said case, the facts were very similar to the facts of the present case. An application had been made under Section 20 of the Arbitration Act, 1940 for

a reference of claim made by the appellant to the arbitrator. Before the Court hearing the application under Section 20 of the Act, the respondent which was also State of Goa, made no reference to any counter claim. However, before the arbitrator, a counter claim came to be filed and this was allowed. This Court held that allowing of such a counter claim was bad in law as the counter claim was never placed by the respondent (State of Goa) before the Court and the same was never ordered to be referred to the arbitrator. It was also held that in such circumstances, the arbitrator had no jurisdiction to entertain the counter claim put up by the respondent. This Court, therefore, set aside that part of the award which granted the counter claim in favour of the respondent. It was observed that the respondent was free to agitate the counter claim in case it was permissible in terms of the agreement and in terms of law.

5. In view of the aforesaid decision of this Court, with which I respectfully agree, there is no substance in this appeal and the same stands dismissed.

R.S. MOHITE, J.

ssm